

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

1	KLEEN PRODUCTS, LLC., et al.,	}	No. 2010 C 5711 April 19, 2012 2:15 P.M.
2	Plaintiffs,		
3			
4	v.		
5	PACKAGING CORPORATION OF AMERICA,		
6	et al.,	}	
7	Defendants.		

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HON. NAN NOLAN

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1 THE CLERK: 10 C 5711, Kleen Products versus  
2 Packaging.

3 THE COURT: Okay. So we are back. Well, Mr. Snyder  
4 is here too. I hope you have met everyone, Mr. Snyder.

02:18:15 5 So for our plaintiffs, please, will you identify  
6 yourself and your team, please.

7 MR. MOGIN: Dan Mogin for the plaintiffs, Your Honor.  
8 Also with me are Walter Haas, ScottScott; Charles Goodwin from  
9 Berger & Montague; Brian Clark from the Lockridge firm; and Mr.  
02:18:31 10 Wozniak from Freed Kanner.

11 THE COURT: Good. Thank you. Hi, everybody.  
12 Welcome.

13 And for Mr. Neuwirth, we'll begin with you. You have  
14 the named party.

02:18:41 15 MR. NEUWIRTH: Thank you. Stephen Neuwirth for  
16 defendant Georgia Pacific.

17 THE COURT: Okay. And?

18 MR. McKEOWN: James McKeown for International Paper.

19 THE COURT: Hi, Mr. McKeown. Thank you.

02:18:52 20 MR. MAROVITZ: Good afternoon. Andy Marovitz and  
21 Britt Miller for Temple-Inland.

22 THE COURT: Okay, Mr. Marovitz and Miss Miller for  
23 Temple.

24 MR. McCAREINS: Mark McCareins and Mike Mayer for  
02:19:04 25 RockTenn.

1 THE COURT: Thank you.

2 MR. MENDEL: Scott Mendel for Cascades and Norampac.

3 THE COURT: Thank you, Mr. Mendel.

4 MS. DIVER: Jennifer Diver and Rachel Lewis for

02:19:14

5 Weyerhaeuser Company.

6 THE COURT: Thank you.

7 MR. FELLER: And, Your Honor, Leonid Feller and Daniel  
8 Laytin on behalf of Packaging Corporation of America.

9 THE COURT: Good. All right.

02:19:22

10 So when we last met, we decided that, it was agreed  
11 between the parties that between that date and today the  
12 plaintiffs would meet with the defendants individually in meet  
13 and confers in order to be able to see if there was a way to  
14 resolve not only the search issues but we could also start  
15 talking about other issues too cooperatively or if we were  
16 going to have to resume the hearing again.

02:19:56

17 So let's begin with Mr. Mogin, okay? So, Mr. Mogin,  
18 how many of these meet and confers did you have?

19 MR. MOGIN: We have had seven, Your Honor.

02:20:15

20 THE COURT: Seven?

21 MR. MOGIN: Yes. Beginning Tuesday afternoon with  
22 Cascades Norampac and concluding just now with PCA.

23 THE COURT: Okay.

24 MR. MOGIN: On Wednesday we met in order with

02:20:33

25 Weyerhaeuser, International Paper and RockTenn.

1 THE COURT: Okay.

2 MR. MOGIN: And this morning we met with Temple-Inland  
3 and Georgia Pacific.

4 THE COURT: Well, that's very productive.

02:20:46

5 MR. MOGIN: It was informative.

6 THE COURT: Yes.

7 MR. MOGIN: And I guess what I would report to Your  
8 Honor is that I can't report progress. I can report that there

02:21:06

9 has been an exchange of information and an exchange of views  
10 that was helpful. I now better understand both the defendants'  
11 position, the feasibility from their point of view of their  
12 ability to comply with our various requests, and I also have a  
13 better understanding of the process that they went through as  
14 well as a better understanding of their actual responses to the  
15 document requests.

02:21:30

16 There is a lot of uniformity that emerged in these  
17 meetings. I would say that there were more uniformity than  
18 there were differences among the defendants.

19 Ultimately, though, Your Honor, you will recall at the  
20 last hearing after you -- Mr. Regard, we were about halfway  
21 through Mr. Regard's testimony, and you had a meeting I think  
22 with the chief judge that you had to get off to, and you asked  
23 us to do something very specific. You asked us to get together  
24 with our experts and see if we could devise a protocol that fit  
25 within the boolean system that the defendants had devised, that

02:21:50

02:22:12

1 the testimony had been about, and we did that. We got together  
2 with Mr. Lewis, Dr. Lewis, and our other consultants and spent,  
3 moved as quickly as we could but spent a considerable amount of  
4 time on it. And we tried to come up with a way to accomplish  
5 this, that is, preserve the boolean search methodology, give us  
6 better measures of validation, the type of measures that we  
7 were seeking which were recall oriented, and to mix some of the  
8 principles that Dr. Lewis talked about in terms of supervised  
9 learning and random sampling in the sense that, yes, there  
10 would be two random samples, small random samples by each  
11 defendant, which, as some people characterize, that the  
12 plaintiffs would look over their shoulder. So there would be  
13 first cut of documents, and this is described in the protocol  
14 which I believe Your Honor has that we gave the defendants on  
15 the 3rd of April, a first cut of documents where we looked at  
16 the totality of the corpus that defendants had collected,  
17 putting aside the disagreements that we've been having to this  
18 point about what should be in that corpus, taking a measurement  
19 so that we got some sense of the number of responsive documents  
20 or hits, if you will, using the boolean strings as to the  
21 corpus; then taking a look at the hit set itself, and again  
22 doing another measurement.

23 At each level the plaintiffs would see nonprivileged  
24 but some amount of nonresponsive documents as well. Recall,  
25 Your Honor, that with respect to that, there is a pretty strong

1 protective order in place so there would be no misuse of  
2 documents, as well as if the defendants have competitive  
3 concerns about the nonresponsive documents that would be  
4 produced in this set, they could designate them under the terms  
5 of that confidentiality order so that only outside counsel  
6 would be able to see them.

7 So that is a degree of cooperation consistent with the  
8 Sedona concept of cooperation that we've asked for, and I will  
9 say that not a single defendant has accepted that. Some are in  
10 consideration of some aspects of that request. Most have  
11 unilaterally rejected, or I shouldn't say unilaterally, I  
12 should say categorically rejected it. So I don't know how much  
13 further down the pike we are with respect to testing and trying  
14 to work within that boolean construct that the defendants  
15 devised.

16 Now, that's not the only thing that we discussed. We  
17 discussed custodians, we discussed methods for discovering  
18 other potential custodians other than merely looking through  
19 what at this point amounts to some volume of documents, and  
20 I'll come back to that in just a second, and we haven't made a  
21 great deal of progress on that, but there has been a fair  
22 amount of discussion with respect to that.

23 Now, one of the things that we have asked for, which  
24 has not been categorically rejected across the board, is using  
25 the boolean process is a dictionary. As I understand it, each

1 of the tools as it processes the documents categorizes or lists  
2 each of the words that are used. So for each defendant there  
3 would be a set of words that was unique to that particular  
4 defendant.

02:26:32

5 For example, the best --

6 THE COURT: That's not a keyword?

7 MR. MOGIN: It would be a keyword. In other words, it  
8 would be a word that was within the corpus of the defendants'  
9 documents, a word that would be used by the company itself. So

02:26:48

10 similar, Your Honor, if you recall the deposition transcripts,  
11 particularly the mini transcripts that we get these days, you  
12 look in the back and you see there's a list of words. And it  
13 tells you you can find the word "magistrate" on page 5, page  
14 15, page 13. So you get a sense with each word that's used by  
15 the company of how --

02:27:09

16 THE COURT: And the computer automatically can do  
17 that?

18 MR. MOGIN: Yes. Each of the --

19 THE COURT: The court reporter's computer can do that  
20 too? When you say from the -- I know, I just mean from the  
21 transcript. When you say it was at the back of the transcript,  
22 it's like an index, it's like an automatic index?

02:27:20

23 MR. MOGIN: Yes, Your Honor.

24 THE COURT: Well, what do you know?

02:27:33

25 MR. MOGIN: So each of the defendants could do that.



1 We could then take that list, review that list, work with our  
2 linguists and Dr. Lewis to see if we couldn't come up with  
3 different strings that would be usable for us.

02:27:53

4 Most of the defendants will tell you that they don't  
5 want to do that. What they prefer us to do is to review the  
6 documents that are being produced and then come back to them  
7 sort of in the traditional iterative way, and we'll consider  
8 this string, we'll consider that custodian, that type of thing  
9 as has traditionally been done, which from our viewpoint, quite  
10 frankly, Your Honor, is not satisfactory. It would delay the  
11 process for many months.

02:28:17

12 Now, with respect to the actual productions that have  
13 occurred so far, as I stand here today I have received  
14 approximately, I have received a hard drive yesterday from  
15 International Paper that I'm told has approximately 200,000  
16 pages of hard copy documents, not ESI.

02:28:38

17 THE COURT: Not?

18 MR. MOGIN: Not.

19 THE COURT: 200,000, okay.

02:28:52

20 MR. MOGIN: PCA approximately a week ago produced what  
21 they have represented is about half of the totality of their  
22 production, which includes other, which includes a substantial  
23 amount of ESI.

24 THE COURT: Okay. Is that email or is that --

02:29:17

25 MR. MOGIN: Yes.

1 THE COURT: That's email? Okay.

2 MR. MOGIN: Yes. We have received schedules, sort of  
3 loose but good faith schedules from the rest of the defendants  
4 with respect to their intended production. It's a bit unique  
02:29:36 5 as to each defendant. Some are producing in kind of defined  
6 batches, others are producing in less defined batches, some  
7 aren't really batching at all. So we have a better  
8 understanding of that. We have some rudimentary understanding,  
9 and I do mean rudimentary, of what's in the batches. And  
02:30:02 10 that's about where we stand from the plaintiffs' perspective.

11 So to put a bottom line to it, we have a better  
12 understanding of what's been done, but not agreement about  
13 what's to be done other than the defendants more or less say  
14 that they will proceed the way they have been proceeding and  
02:30:32 15 will at the end of the process or as plaintiffs review the  
16 documents accept additional suggestions in terms of custodians  
17 or in terms of search requirements.

18 We will not see -- first off, all of the productions  
19 as a totality from what I understand this morning won't be  
02:30:54 20 completed for at least six months. And all of the defendants  
21 propose that privilege logs, which in these types of cases are  
22 particularly important, won't be produced until the end of each  
23 of their respective productions. So that's another 60 days  
24 plus for each defendant as they end.

02:31:24 25 So that takes us approximately, by my reckoning, sort

1 of a best case scenario is we are back here in a year. I'm  
2 sorry. We are back here toward the end of the year. And as I  
3 understand it, a new magistrate has to drink from the fire hose  
4 and try to understand this case.

02:31:53

5 THE COURT: Or Judge Shadur, because Judge Shadur  
6 usually doesn't refer cases, so it may be Judge Shadur. This  
7 was a special, this was a special referral.

02:32:15

8 MR. MOGIN: So I can't tell you that I know precisely  
9 where we go from here. The idea that the defendants have  
10 raised, which is review all of our documents and then get back  
11 to us, is problematic from the plaintiffs' standpoint. It's as  
12 if the past year hasn't happened, from our perspective; it's as  
13 if the hearings and all the briefing hasn't taken place.

02:32:44

14 So I'm sure you'll want to hear from the defendants,  
15 and I'm sure they'll tell you that I'm all wrong, but I don't  
16 know at this point. And when I say I don't know, I truly don't  
17 know what it's productive to do in terms of continuing the  
18 hearing or going down another path. And some of these  
19 discussions I will tell you are far from complete, and we've  
20 made pledges in good faith to continue in very short time to  
21 follow up and with more discussions.

02:33:08

02:33:38

22 THE COURT: Well, you are, I want to say, I mean, this  
23 entire case has been a work in progress, okay, for me. You are  
24 accurate that at the end of the second day of the evidentiary  
25 hearing, when I was talking off the seat of my pants or a

1 little bit of thought, I mean more than the seat of my pants,  
2 but I was saying that I wanted you to think about if we were  
3 to -- that what I learned from the hearing, what seemed to be  
4 the most important is that whatever your method would be,  
02:34:08 5 whether it would be boolean or predictive coding or whatever  
6 they are going to call it next year, is that the parties and to  
7 a certain extent the Court, but I think it's more the parties,  
8 want to feel and be able to say that this is a verifiable,  
9 somewhat verifiable and accurate method that they have chosen.

02:34:37 10 That's what I was trying to say. I don't think that I said --  
11 and I suggest it because I actually think Mr. Regard and Dr.  
12 Lewis were, you know, and maybe Dr. Tenny too, maybe could help  
13 in trying to do that.

14 Now, the only cases Chris and I have found that have  
02:35:04 15 even discussed that are Victor Stanley and Judge Facciola. But  
16 they kind of just talk about it in general. I was only talking  
17 about it in general when I threw it back to you.

18 We fast forward to two weeks ago. I think you're  
19 putting the horse before the cart here as a method goes because  
02:35:39 20 to me I feel like I have learned a lot more about what the  
21 nature of the search is than I knew two weeks ago.

22 One day -- I owe you an apology. I was very rude to  
23 you. You wanted to say something about preservation, and I  
24 jumped down your throat because I thought, oh, my God, you're  
02:36:02 25 going to start some sanctions thing is what I thought, okay?

1           Instead, if I had to do it over again, I would have  
2 said, are you talking about sources of information, are they  
3 accessible, are they not reasonably accessible, you know, and  
4 not even think about sanctions or anything like that. What I'm  
02:36:27 5 seeing now between what, I think Miss Miller keeps giving me  
6 these scripts for everything, which I really appreciate. I  
7 have more of the 30(b)(6). We've read some of the 30(b)(6), so  
8 we are starting to get it just like you are starting to get a  
9 better understanding of these systems, the letters or the, your  
02:36:55 10 new checklist here that you provided following or for the meet  
11 and confers.

12           MR. MOGIN: Right, the agenda that the defendants had  
13 requested.

14           THE COURT: Right. I'm not, I don't have, because I'm  
02:37:16 15 going to be out of here September 30th, I don't have the luxury  
16 to put you off or, you know, to try to just push this off. But  
17 I don't think you could do or Dr. Lewis and Dr. Regard are in a  
18 position to test the corpus yet, because unless you know a lot  
19 more than I know, until we figure out some of the answers to  
02:37:44 20 the questions on what's active, was not active or what's  
21 accessible, what's not accessible, what has been searched, what  
22 hasn't been searched, I don't know why you'd want to do these,  
23 the statistical check until you get that information.

24           MR. MOGIN: Frankly, Your Honor, respectfully I was  
02:38:03 25 following your lead in the sense that --

1 THE COURT: Well, I know, and I'm telling you what  
2 happened. I mean, I now get that if we are going to do it, you  
3 don't -- I mean, I don't know what the it is, okay? I don't  
4 know what because I don't know -- and until you look at this is  
5 where I think too until you're able to look at some of the  
6 materials that are turned over and you can in fact go back to  
7 them and say, hey, I need da da da da da, that's what I am  
8 seeing.

9 And this isn't, this is just a really iterative  
10 process here is what I'm trying to say. I don't know if the  
11 defendants, and today we are going to try to give everybody an  
12 individual opportunity here too, I don't want to be clumping  
13 them as the defendants; but I don't know if they are saying no,  
14 we don't want any kind of testing or -- I don't even know what  
15 testing means, but, you know, a check, some kind of a  
16 reasonable check. I would think they would want to know  
17 they've done a good search. They may need these documents.

18 I mean, this is the irony of this. In every white  
19 collar case, not that you're a white collar case, but in every  
20 white collar case I was in in this building for 25 years, I  
21 needed the documents as much as the government needed the  
22 documents.

23 So I don't -- I mean, I don't think even if we, even  
24 if all seven of them said "We want to do the search, we want to  
25 be tested," I don't know what you would, you would only be

1 testing now without having a bigger portion of each one of  
2 their work, right?

3 MR. MOGIN: Correct, Your Honor, but as I said in  
4 light of the Court's comments, and in order to avoid what could  
5 have been World War III with respect to what should be in the  
6 corpus, for purposes of these discussions, to see if we could  
7 get something to come back over the table to us, we were  
8 willing to table the discussion of collection to see if we  
9 could get a cooperative movement going. And I'm disappointed  
10 to be able to tell you that no defendant will commit, none will  
11 commit to a version of the protocol, even taking step one which  
12 has to do with the collection, off of the table. No defendant  
13 will commit at this point. Some have said they are checking on  
14 it, but none have committed to even giving us the simple data  
15 dictionary that I just described for you, which is the product  
16 of, that's essentially the same thing as taking a look at the  
17 documents that they are producing. It's just an abbreviation.  
18 It gets us a lot of relevant information quickly, painlessly  
19 and inexpensively from the defendants' perspective so that it  
20 accelerates our ability to look at their documents and to have  
21 an understanding of their documents as well as to get some  
22 sense of the real world deficiencies in their search strings.  
23 Admittedly to this point we have been talking without having an  
24 actual knowledge of what's in the corpus.

25 THE COURT: Do you feel that after these seven

1 meetings, you now understand or have a better understanding of  
2 accessible, nonaccessible data? I mean, do you have an idea of  
3 what's in their collection?

4 MR. MOGIN: I certainly have a better understanding.

02:42:31

5 THE COURT: Okay. So let's take example that the one  
6 that's just turned over the 250,000, who just turned over the  
7 one with some emails in it? Was that you, Jim?

8 MR. NEUWIRTH: No, that was --

9 MR. FELLER: Yes, Your Honor?

02:42:49

10 THE COURT: So on that, sir, if you can, will you tell  
11 me that -- I'm so trying to stay away from backup -- I'm trying  
12 to stay away from buzz words that everybody uses different buzz  
13 words. So of your production, does it include both active data  
14 and backup tapes? Does it, you know, of your email, what did  
15 you search?

02:43:19

16 MR. FELLER: Sure, Your Honor. And it's Leonid Feller  
17 for PCA.

18 Our collection which we just produced is about 47,000  
19 documents or document equivalent total. A portion of that is  
20 hard copy, a portion of that is ESI. The ESI consists of  
21 emails, it consists of Microsoft Word documents, Excel  
22 documents, PowerPoints, all those sorts of things.

02:43:32

23 In the lingo that we've been using in court, those  
24 would all be active server type documents. We, with a very  
25 narrow exception, did not go to any backup tapes to produce

02:43:56



1 that, that ESI.

2 THE COURT: In your explanation to Mr. Mogin, did you  
3 explain to him what periods of time you have active data, where  
4 the backup tape -- I mean, what kind of a guide did you give  
5 him in addition to giving him the documents?

02:44:24

6 ATTORNEY NO. 2: So I think we covered some of that  
7 today when we met earlier. A lot of that information was  
8 provided in our 30(b)(6) written submission. I imagine we'll  
9 cover more of it when we have the actual 30(b)(6) deposition.  
10 But I would hope that Mr. Mogin and his team have a fairly good  
11 understanding of all of those issues.

02:44:41

12 THE COURT: Okay. And has he -- you've given him a  
13 list of your custodians that you searched under, and did he ask  
14 you to increase any of your custodians or did he offer to you  
15 any words that he wanted you to search?

02:45:09

16 MR. FELLER: Your Honor, we have provided a list of  
17 custodians, and what we have said is we are perfectly willing  
18 to take under consideration any additional custodians  
19 plaintiffs would like to suggest. They have not done that yet,  
20 but I understand that's going to be an ongoing process and they  
21 may do that in the future. And similarly with search terms,  
22 they haven't at this point suggested any additional search  
23 terms, but we understand they may do that in the future.

02:45:25

24 MR. MOGIN: May I address the custodian issue?

25 THE COURT: Yes.

02:45:40

1 MR. MOGIN: With respect to the defendants, Your  
2 Honor, if you look at the backup, as you know, from the  
3 inception the plaintiffs have been clear that they were  
4 uncomfortable with the custodial approach.

02:45:53

5 THE COURT: Right.

6 MR. MOGIN: The defendants' position was essentially  
7 that it was the only feasible way for them to conduct the  
8 search.

02:46:03

9 If you go back and you look at the requests for  
10 production of documents, I believe it's definition or  
11 instruction No. 9 lists corporate functions that we are  
12 interested in, identifies those corporate functions. It's not  
13 quite a job description, but it's who performs the following  
14 functions. And then there are various requests for production  
15 that ask for materials from particular corporate functions.

02:46:25

16 Corporate functions aren't quite the same thing as the  
17 custodians. What the defendants will tell you is that by and  
18 large the custodians that they have tendered are the top people  
19 that fulfill those functions.

02:46:51

20 Some defendants, and as I'm standing here I can't tell  
21 you which one, have given me job descriptions, and the joke  
22 during our meet and confers was those are great but they are in  
23 HR-speak; I speak antitrust and English, I don't know HR, and I  
24 don't want to hire another linguist. So some of the defendants  
25 are considering whether to give us more or different

02:47:14

1 descriptions.

2 But the issue is to what extent can the custodians  
3 match the functions.

4 THE COURT: It's No. 9.

02:47:27

5 MR. MOGIN: It is No. 9. And defendants go,  
6 defendants by and large, their custodians are, as they describe  
7 them, top people, decisionmakers if you will, which is all well  
8 and good. From our perspective, those may be the people who  
9 actually effectuated the conspiracy. But that does not mean  
10 those are the people who made records that would reveal the  
11 conspiracy.

02:47:54

12 Recall, please, Your Honor, that as this is pleaded in  
13 the complaint, and this is something that Judge Shadur made  
14 specific reference to in his opinion denying the motions to  
15 dismiss, we are not writing on a blank slate here. This is an  
16 industry with a history. In fact, we even alleged that there  
17 was a seminar that took place at a trade association meeting,  
18 the American Forest Products Association, in 2005, just as the  
19 conspiracy was taking off, and the seminar was entitled "Are  
20 you vulnerable to antitrust lawsuits?" From the information  
21 that we have, it was as much about how to conceal an antitrust  
22 conspiracy as it was about anything else.

02:48:12

02:48:37

23 The defendants, of course, the trade association will  
24 dispute that characterization. However, I would note, you  
25 know, we all live in a world where the headlines are out there.

02:48:57

1 You probably heard of the eBooks case that the justice  
2 department just filed against Apple and other publishers, and  
3 there is a specific reference to that type of thing in the  
4 justice department's allegations that says that the defendants  
5 went to great pains, the chief executives met, that they went  
6 to great pains to avoid leaving paper trails, things like be  
7 sure, they would tell each other, to double delete.

8 So given this industry's history, that is precisely  
9 the type of situation that I think it's reasonable for us to  
10 use as our investigative assumption, and because of that we  
11 have to go deeper on these organizational charts with respect  
12 to custodians than most of the defendants have gone to this  
13 point. And in order to do that, I need some sort of matching,  
14 and you'll see that on the agenda, Your Honor, I asked for this  
15 in the meet and confer, what can we do to bridge the gap  
16 between your custodian list and my corporate function list, and  
17 so that I can get an understanding of who might be a possible  
18 record keeper of the conspiracy as opposed to decisionmaker.

19 THE COURT: You know, I saw that. What do you mean by  
20 that? I saw that in one of your -- how would someone be the  
21 record keeper of the conspiracy? What do you mean?

22 MR. MOGIN: It's fairly simple. I'm the chief  
23 executive officer, and I met with my fellow chief executive  
24 officers, and we all agreed we would raise prices by \$50 a ton,  
25 and we would reduce our capacity at about the same time.

1 Well, I'm not going to, as the CEO, write a memo that  
2 says that I just broke the antitrust laws and I've exposed  
3 myself to criminal liability and my corporation to treble  
4 damages. But I may say something to somebody on my staff who  
5 will write something down to justify other conduct. This is  
6 what my 32 years has taught me, that that is the type of  
7 evidence that we see in these cases.

8 MR. FELLER: And, Your Honor, what Mr. Mogin just said  
9 is -- I'll speak for PCA -- is exactly why we think you're  
10 exactly right, that plaintiffs have to get through some of  
11 these documents and actually look at what we've produced.  
12 We've picked 14 custodians for PCA. Mr. Mogin is exactly  
13 right. It's our CEO, it's our CFO, it's our highest level  
14 officials having to do with any issues in the complaint. We  
15 think they are the right people. We think they are -- we think  
16 they are the appropriate people.

17 If Mr. Mogin looks at the documents and says well,  
18 what about this person, or our organization chart and that  
19 person, we are entirely prepared to have that discussion. We  
20 haven't been -- the plaintiffs haven't, for whatever reason,  
21 proposed any additional names to us yet.

22 What we can't do, what we just as Mr. Echols said at  
23 the last hearing, what we don't know how to do is collect by  
24 corporate function. That is, it has no meaning to us as a  
25 practical thing that we can actually go out and do.

1           So what we are waiting on and the conversation we are  
2 perfectly happy to have is for suggestions of additional  
3 custodians and to have a meaningful discussion as to whether  
4 those are appropriate or not.

02:52:35

5           MR. NEUWIRTH: May I address this, Your Honor?

6           THE COURT: Sure.

7           MR. NEUWIRTH: May I have the podium again?

8           Your Honor, the --

9           If you can give me some space?

02:52:52

10          Your Honor, we appreciate that you want to hear  
11 perhaps from multiple defendants today, but there are a few  
12 things that I believe I can say on behalf of all the defendants  
13 on the issues that have been discussed, and Mr. McKeown has  
14 some additional points if it would please the Court.

02:53:08

15          But as a general matter, we told you at the last  
16 conference before Your Honor that the defendants are seriously  
17 interested, as you said, in trying to get a complete and valid  
18 production done that will enable us as well as the plaintiffs  
19 to make our case to the Judge on the merits. We want the  
20 evidence in the record.

02:53:32

21          As we told Mr. Mogin when we met with him today on  
22 behalf of Georgia Pacific, and I know other defendants have  
23 said, the corporate functions that are listed in No. 9 are very  
24 broad corporate functions that in the case of Georgia Pacific  
25 could, if taken literally, cover almost the entire business.

02:53:50

1 And we explained in our meet and confer with Mr. Mogin that the  
2 problem here, and your word "ironic" is correct, is that we  
3 really believe both sides are trying to do the same thing which  
4 is to figure out who are the people and where are the places in  
5 the company where responsive, relevant information exists and  
6 how can we get it produced?

7 The difference is that because the plaintiffs are  
8 obviously coming to this without having worked at these  
9 companies, they need to describe things in a certain level of  
10 generality, and the companies very familiar with how their  
11 businesses work have attempted to identify the actual people  
12 who are doing the things that are the subject matter of the  
13 plaintiffs' complaint.

14 Now, in the abstract we understand that it is always  
15 possible for people to say well, isn't there possibly someone  
16 else out there? And that's why we have so strongly suggested  
17 to Your Honor last week and have continued to suggest today  
18 that through the productions that are being made, the  
19 plaintiffs will have an opportunity to see in concrete form  
20 what it is that we are producing from these custodians' files  
21 so that, to the extent the plaintiffs still feel it is  
22 necessary to do so, we can have a well-informed and concrete  
23 discussion about what else it may make sense to do.

24 And just to put this in perspective, as Mr. Mogin  
25 mentioned, there's already been a production by PCA and by

1 Weyerhaeuser. As we told you last week, Georgia Pacific is on  
2 the verge, and we've committed to doing it by the Tuesday, to  
3 producing over 700,000 pages of documents which with limited  
4 exception is going to be the full production of ESI based on  
02:55:53 5 the search term process that was described to Your Honor.  
6 That's going to be on Tuesday, which will mean that if you take  
7 what's been produced plus what I understand is the more than  
8 90,000 pages that Weyerhaeuser is going to be producing today,  
9 by Tuesday there will be over a million pages of new documents  
02:56:12 10 that have been produced since the last time we were with Your  
11 Honor.

12 And nobody is saying to the plaintiffs that you have  
13 to look at every single thing that's been produced before we'll  
14 talk to you further. We've already started talking, and we  
02:56:24 15 think in some respects the conversations have been  
16 constructive. And I know Georgia Pacific like many other of  
17 the defendants agreed today to take certain topics that the  
18 plaintiffs raised and get back to them, and we can give you the  
19 examples if it would be helpful. But in general all that we  
02:56:40 20 are trying to do here is have a discussion which is concrete.  
21 Nobody is looking to put this off by six months or a year. We  
22 think that over the next coming weeks when the plaintiffs are  
23 producing what will end up being several million pages of  
24 documents, there will be something concrete in the ESI for the  
02:56:58 25 plaintiffs to look at. We'll continue to meet with them. We



1 are interested in continuing to talk about the time periods for  
2 the production.

3 And I would just add in terms of, just very quickly in  
4 terms of this issue of active versus inactive. Certainly one  
02:57:15 5 of the things we are all trying to do is make sure that we are  
6 getting documents from the entire time period, not just from  
7 the recent period. And I can tell you that in the case of  
8 Georgia Pacific, we are producing tens of thousands of  
9 documents of ESI from the years 2004, 2005, 2006 that have been  
02:57:37 10 collected from the custodian files and the shared files and the  
11 other sources that we went to to collect the documents.

12 The goal here is to have an informed discussion that  
13 will be concrete and not abstract, that will allow us to work  
14 with the plaintiffs to figure things out. And I can assure you  
02:57:57 15 that in the case of Georgia Pacific and I think all the  
16 defendants, we are prepared to talk about other custodians, we  
17 are prepared to talk about other search terms, but we think to  
18 talk in broad generalities about going from where we are to a  
19 completely different broad process that's reflected in the type  
02:58:18 20 of protocol that's been presented is not the most constructive  
21 way to move forward. We think the most constructive way is to  
22 produce what we are producing and continue to talk to the  
23 plaintiffs based on the content that's being produced about  
24 what it makes sense to do more.

02:58:33 25 And as Mr. McKeown will explain, in the one example

1 that Mr. Mogin gave of whether or not we are willing to produce  
2 these word indexes, I believe all the defendants are prepared  
3 to do that and several of them already told that to Mr. Mogin  
4 today. So I'm a little surprised by that.

02:58:51

5 But I think our goal is to move this forward, as we  
6 said last time, with serious discussions, but to try to do it  
7 in a way that will allow us to make real progress by giving  
8 these documents to the plaintiffs, having them talk to us about  
9 what's in them, finding, you know, if they believe that the  
10 custodians we have identified as reflected in the documents are  
11 not sufficient, we can then have a meaningful discussion and  
12 involve you in it if necessary about how to move forward.

02:59:09

13 And if it please the Court, Mr. McKeown I think can  
14 talk about some of the specific things that came up in some of  
15 the meet and confers that we are prepared to do.

02:59:27

16 THE COURT: Sure.

17 MR. McKEOWN: Actually, I'm not going to have too much  
18 at this point, Your Honor, other than Mr. Mogin is correct that  
19 yesterday he had asked us about would we be willing to create  
20 and prepare a list of all the words that are in our documents  
21 according to the, I think Clearwell is what we used. And we  
22 checked this morning, and at least International Paper is  
23 prepared to prepare that list. We need to talk a little more  
24 about some of the logistics, but I wanted to use that as an  
25 example.

02:59:46

03:00:04

1 I think these discussions over the past three days  
2 have been very productive. Ours went for over two hours. Mr.  
3 Sprung is not with us today, but he was also involved in ours.  
4 He came with a list of custodians, and we talked about people  
03:00:19 5 and their jobs, and that will continue. We have indicated if  
6 there is a particular custodian to talk about, let's talk about  
7 it.

8 On search terms, we've also indicated that to the  
9 extent that you look in our documents and you think we are  
03:00:30 10 missing something and you want us to test some additional  
11 search terms, we are prepared to test additional search terms.

12 THE COURT: What do you mean by test?

13 MR. McKEOWN: Well, let's say, for example, that they  
14 look at our documents and they say "We have found" -- they look  
03:00:41 15 at this data list and they say "We have found that you have not  
16 used this term, and we want you to test it."

17 We could run that search term against the documents  
18 that we have in our collection that have not yet been hit by  
19 any of the search terms, and we can find out if it hits 400  
03:00:57 20 documents or 400,000 documents. If it hits 400 documents, if  
21 there's a reasonable list of additional search terms, you know,  
22 I'm not going to fight in here over 400 documents. If it hits  
23 400,000 documents, that's a whole different kettle of fish.

24 So that's why we think we are going to be making the  
03:01:18 25 production of the ESI for our 26 named custodians in about

1 three weeks. With that plus this list of all the terms that  
2 are in the documents, that would help the discussion we think.

3 THE COURT: What did Clearwell tell you how, either  
4 how -- so Clearwell can make a dictionary, I mean, they can  
5 create this dictionary?

03:01:43

6 MR. McKEOWN: I am told, and I didn't get it straight  
7 from Clearwell, I got it from one of the ESI folks that is  
8 helping us. I am told that, at least the way we have our  
9 database collected, we can create a list of all the words that  
10 are found somewhere in our documents.

03:01:58

11 THE COURT: And then does it tell them where it is?

12 MR. McKEOWN: No.

13 THE COURT: It just says --

14 MR. McKEOWN: It says "These are all the terms."

03:02:08

15 But if you're worried that someone is misspelling some  
16 word and you want to see the various misspellings, it was  
17 something that came up yesterday in our meet and confer  
18 yesterday afternoon.

19 THE COURT: Right.

03:02:19

20 MR. McKEOWN: They asked about it, and we can do that,  
21 and we are prepared to do that, but I think those are the types  
22 of discussions that probably need to continue. Each side took  
23 their homework home, at least in our case, for what goes next.

24 MR. MOGIN: May I just say one thing about that,  
25 please, Your Honor?

03:02:34

1 THE COURT: Sure.

2 MR. MOGIN: I very much appreciate Mr. McKeown's  
3 commitment, that is, we've checked our notes. That's the first  
4 commitment that we've heard, and it's very significant that  
03:02:43 5 it's coming from Mr. McKeown because at this point, given the  
6 Temple-Inland acquisition by his client International Paper and  
7 the prior acquisition of Weyerhaeuser by International Paper,  
8 it could be that Mr. McKeown's commitment works for three of  
9 the seven defendants, and if the other defendants are prepared  
03:03:05 10 at this point to commit on the record, that would be very  
11 helpful. I don't know whether he's speaking for IP in his  
12 commitment.

13 THE COURT: Now, wait.

14 MR. MOGIN: The totality of the IP defendants.

03:03:15 15 THE COURT: But would that, you know, you're being a  
16 good plaintiffs' lawyer, and good trial lawyers sometimes have  
17 to ask for more than what they really have to have, and part of  
18 my job is to sort of get things down here. I think you have  
19 done a very thorough job here, Mr. Mogin, and I'm, I am trying  
03:03:44 20 to get you so you can get comfortable with this because they  
21 are willing to give up the hearing. That's really what the  
22 crux of today is. I mean, it is, is can we -- because time  
23 wise we can't do both. I mean, truthfully, we can't, okay?

24 So what I'm trying to do, the defendants have all said  
03:04:06 25 on behalf of their clients that, you know, I kind of put it how

1 do you want to spend the next five months, but it is kind of in  
2 reality. So we need to get you a comfort level here too, I  
3 mean, is what I'm trying to do here.

03:04:37

4 So if -- I literally don't know what this -- I mean,  
5 you just directed us to No. 9 corporate functions. You  
6 mentioned the dictionary. And I don't think you're just upping  
7 the ante here. I think you're looking for some way that you  
8 can be comfortable on behalf of the class that you're getting  
9 the, you're getting -- it's sure as heck never perfection, but  
10 you're getting enough information so you can try your case.

03:05:08

11 Now, would this dictionary, if I could get this  
12 dictionary, if I could get the other defendants to commit to at  
13 least calling, I don't know what system they used, but if I  
14 could get them to commit to calling, figuring out the  
15 dictionary, would that help in your, would that help you in  
16 saying that you think we could work this out?

03:05:28

17 MR. MOGIN: That would certainly be a help, Your  
18 Honor. It's not --

19 THE COURT: The end-all?

03:05:41

20 MR. MOGIN: It's not the silver bullet. It's one  
21 piece of many pieces.

22 THE COURT: Okay. You're a very good peacemaker, Mr.  
23 McKeown.

24 MR. NEUWIRTH: And I think I can say unless --

03:05:54

25 THE COURT: Again, this to me --

1 MR. NEUWIRTH: We can all try.

2 THE COURT: -- is something that would help you.

3 MR. NEUWIRTH: We can all try. I think we use  
4 Clearwell also, so I think we can do it.

03:06:04

5 THE COURT: And Mr. McKeown might have the other three  
6 that are kind of connected.

7 MR. MAROVITZ: Judge, if I may? If I were a client, I  
8 would be very happy to have Mr. McKeown represent me.

03:06:24

9 I'm Andy Marovitz. I represent Temple-Inland. And I  
10 don't remember, I don't want the record to be unclear, I do  
11 represent Temple-Inland, and in connection with this case, Mr.  
12 McKeown does not speak for Temple-Inland or for me.

13 THE COURT: I'm sorry.

03:06:35

14 MR. MAROVITZ: No, no worry. Just, given what Mr.  
15 Mogin said, I want the record to be very clear about that.

16 That said, for purposes of the data dictionary this  
17 morning, Mr. Mogin asked us about it. We said we would go back  
18 and check into that, and we, to the extent that our system  
19 allows us to do that, we'll be happy to provide it, to provide  
20 the -- I think it's a data dictionary. I think it's a word  
21 dictionary.

03:06:54

22 MR. FELLER: And, Your Honor, again, Leonid Feller for  
23 PCA.

03:07:03

24 We heard about the data dictionary for the first time  
25 today at 1:30. We did not use Clearwell, and so, again, I

03:07:22 1 don't even know if we have the capability. If we do have the  
2 capability, I don't think we have an objection conceptually to  
3 producing it. We have some concerns down the road about what  
4 it could and should be used for and how it actually advances  
5 the process. So subject to whether or not it actually exists  
6 and whether our technology is capable of producing it, we don't  
7 have an objection to it.

8 THE COURT: Hi.

9 MR. McCAREINS: Mark McCareins for RockTenn.

03:07:37 10 I don't think this dictionary thing came up in our  
11 two-hour meet and confer.

12 THE COURT: Okay.

13 MR. McCAREINS: But they asked us in three different  
14 letters like a hundred questions, so we spent a lot of time  
03:07:49 15 answering those.

16 THE COURT: They did. They are very thorough.

17 MR. McCAREINS: And they are tough graders too.

18 THE COURT: Yes, they are.

19 MR. McCAREINS: So my guru on this subject is Mr.  
03:07:59 20 Mayer.

21 THE COURT: Yes.

22 MR. McCAREINS: Britt Miller sitting back there. And  
23 I don't know if we have this dictionary, so we are checking on  
24 it.

03:08:08 25 THE COURT: Sounds good. That's what I want to hear.



1 MR. McCAREINS: Yes.

2 THE COURT: That's what I need to hear. I never heard  
3 of it either.

4 MR. McCAREINS: It's news to me.

03:08:16

5 THE COURT: Right. Okay.

6 MR. MENDEL: Your Honor, Scott Mendel.

7 We had the first meet and confer for Mr. Mogin, and  
8 that did not come up in our meeting, so I'm hearing about it.

03:08:33

9 THE COURT: See, he got better as the meet and confers  
10 went on, and that is good. And you volunteered, you were the  
11 nice person who started this all off last time.

12 MR. MENDEL: And we do use a different platform for  
13 our documents, but I will check and see if the dictionary is  
14 possible and, if so, what we can do to provide it.

03:08:48

15 THE COURT: Mr. Mogin -- I want to ask a question.  
16 Mr. Mogin, is this dictionary referred to as anything else  
17 other than a dictionary? I mean, is there like another term of  
18 art on this? Mr. McKeown too.

19 MR. McKEOWN: Your Honor, we had the discussion --

03:09:08

20 MS. BARRY: You can call it an index or a word list.  
21 Any system that does boolean search indexes every single word  
22 in the data set so that it can find them.

23 MR. MOGIN: For the record, that was our consultant  
24 Diane Barry, and that was our understanding as well after our  
25 conversation yesterday with Mr. Mogin and his team, that what

03:09:23

1 they are looking for is a list of all the words in the  
2 documents and that we can produce this list of all the words.

3 I also understand it will be fairly lengthy, so it,  
4 therefore, may be transmitted electronically rather than on  
5 paper.

03:09:39

6 THE COURT: Okay. Well, gee, it was worth a trip to  
7 Chicago today. We all learned something knew.

8 I didn't mean to cut you off.

9 MS. DIVER: That's okay, Your Honor. Jennifer Diver  
10 on behalf of Weyerhaeuser Company.

03:09:49

11 We are using the Clearwell search system, and although  
12 this issue did not come up in our meet and confer with Mr.  
13 Mogin, it's my understanding that we are able and prepared to  
14 provide this word index as well.

03:10:02

15 THE COURT: Okay.

16 MR. MOGIN: I don't know how I could have missed all  
17 of these, Your Honor, with the script that I was using.

18 THE COURT: Well, you had a lot to do. Okay.

19 MR. MOGIN: So we got a little sidetracked. We have  
20 worked through one of the issues. The custodian issue remains  
21 open.

03:10:24

22 THE COURT: Well, except what they are saying, what  
23 every single person who stood up here today said is they are  
24 open to, after you look at some of the documents, and it's not  
25 a quid pro quo, but it just makes more sense because they are

03:10:43

1 also acknowledging, unlike an employment case, you don't have  
2 an insider -- I mean I'm assuming you don't have an insider at  
3 seven companies -- so you're not going to know who might be  
4 more appropriate people or more -- I don't even mean  
03:11:06 5 appropriate, but more targeted people. So as soon as you can  
6 get to some of the key and you find out that Mann is sending to  
7 Chris and you didn't know about Chris, maybe you want Chris,  
8 maybe you want to add Chris as a custodian.

9 MR. MOGIN: All I was searching for, Your Honor --

03:11:29 10 THE COURT: They are saying, I affirmatively heard  
11 them say on the record they are willing to do it. Now, if you  
12 come back with 500, they may be in here saying to me "I didn't  
13 agree to 500." But, I mean, as it is, as the record is right  
14 now, all seven, correct, fellows, ladies, all seven said they  
03:11:54 15 will entertain.

16 Now, I am not saying that takes away everything you've  
17 said here, but as the judge here I have to decide whether we  
18 are going back to the hearing or whether we are going to  
19 continue. And I'm inclined to, I'm certainly inclined today  
03:12:34 20 for you to get at least a look-see at these documents. I think  
21 you're going to know much more than you know right now.

22 I think after you also take a look-see, another round  
23 of meet and confers, and I didn't offer the last time, but I'm  
24 happy to sit in if you want it. I mean, I think you're doing  
03:13:10 25 just fine without me, but I would be willing to do that.

1 MR. MOGIN: If you were there, Your Honor, we would  
2 not get the full benefit of Mr. McCareins' sense of humor.

3 THE COURT: No, I actually know Jim. Jim is on our  
4 committee. I actually know Jim. He does have a good sense of  
5 humor, don't you think?

03:13:28

6 MR. MOGIN: Your Honor, may I suggest this then? I  
7 realize that you would prefer not to have to go back to the  
8 hearing.

9 THE COURT: I'd prefer not to what?

03:13:41

10 MR. MOGIN: Yes, not to have to go back to the  
11 hearing.

12 THE COURT: Well --

13 MR. MOGIN: To try to resolve this a different way.

03:13:50

14 THE COURT: Well, that's for sure. That's for sure,  
15 because I am trying to get, I think it's a more direct way for  
16 you to get this information than kind of where we were going.  
17 I would like to get us as good of a search method as possible.  
18 I think, I think we all want the same thing here, actually.

19 MR. MOGIN: Well, I was going to say that one of the  
20 things that seems to get lost in the discussion when the  
21 defendants talk about their efforts and their burden and their  
22 expense, it works two ways. It's not as if I want an unlimited  
23 universe of documents for people to have to plow through. That  
24 just costs me time and money, and as a good plaintiff's lawyer,  
25 I would just as soon get this case over sooner rather than

03:14:51

1 later.

2 THE COURT: Right.

3 MR. MOGIN: Your Honor, may I make the following  
4 suggestion?

03:15:00 5 THE COURT: Sure.

6 MR. MOGIN: There are still a number of issues that  
7 are outstanding, a number of things that were discussed during  
8 the meet and confers that the defendants still have to get back  
9 to us on, similar to what we just went through with the  
03:15:14 10 dictionary issue. Might I suggest that we schedule another  
11 status conference. We'll continue with the meet and confer  
12 process. Perhaps we'll come back here in about three weeks or  
13 so, depending upon your schedule, and we'll report our  
14 iterative progress to you at that point, at which time I will  
03:15:35 15 have had some chance, not a great one, but some chance to have  
16 a look-see. I should hopefully have these dictionaries in  
17 hand.

18 THE COURT: Do you think, Mr. McKeown, did they say  
19 how long it would take to get the dictionary?

03:15:52 20 MR. McKEOWN: Not entirely clear, Your Honor, and with  
21 IT people, when they give me an estimate, I usually have to  
22 quadruple it. But we'll try to get it within the next week or  
23 so.

24 THE COURT: Well, since you started it, it would also  
03:16:05 25 help if maybe you could get Mr. Mogin one of them. When does

1 he get your documents?

2 MR. McKEOWN: He has our hard copy documents, our ESI  
3 documents with the 26 named custodians will be in about three  
4 weeks.

03:16:24

5 MR. NEUWIRTH: We were going to suggest, Your Honor,  
6 that maybe in light of those facts, that it might make sense to  
7 try to do this in the third or fourth week of May so that  
8 there's enough time for us to give what we are giving, have  
9 some opportunity to look at it, and perhaps have some further  
10 meet and confer.

03:16:43

11 MR. McKEOWN: I don't have a problem giving the list  
12 of words sooner rather than later.

13 THE COURT: Well, I'm just thinking. PCA, our PCA  
14 fellow, you've given the documents already?

03:16:55

15 MR. FELLER: Yes, Your Honor.

16 THE COURT: So if you were to go back --

17 MR. FELLER: Yes.

18 THE COURT: And you were -- and who is your, you don't  
19 have Clearwell, do you?

03:17:06

20 MR. FELLER: We don't have Clearwell. Our vendor is  
21 Epiq, and I can certainly call them as soon as we are back. I  
22 take Miss Barry on her word, but candidly I don't know that it  
23 exists or not. But assuming it does --

24 THE COURT: If you could get them yours the quickest,  
25 there might be a way to see how effective, I mean, since Mr.

03:17:22

1 Mogin -- I mean, that would just help if he had the dictionary  
2 and one set of the documents. And then when you come back, we  
3 could talk about something concrete. What do you think about  
4 that?

03:17:41

5 MR. FELLER: Your Honor, again I'm happy to try.

6 THE COURT: Good.

7 MR. FELLER: I don't know that it exists yet much less  
8 how long it will take, but I'm certainly happy to try.

03:17:52

9 MR. McKEOWN: And I don't have a problem, assuming we  
10 can create this word list off the computer, giving the word  
11 list to Mr. Mogin before.

12 THE COURT: Then at least he could see that too. That  
13 would help too. Okay.

03:18:11

14 Well, I think we should do another round, clearly do  
15 another round. You're learning, as you just said, you were  
16 very candid, you've also learned a lot more in talking about  
17 things too. I'm not into taking -- sure.

03:18:42

18 MR. McKEOWN: Yes. Your Honor, I just wanted to  
19 clarify one thing with respect to the dictionaries before we  
20 all broke and started talking about other subjects.

21 Many of the programs have the ability to put in sort  
22 of a hit count next to the word. So if it's the word "Nolan,"  
23 it will say, you'll get a sense that Nolan was hit on 38 times,  
24 40 times, whatever.

03:19:02

25 THE COURT: Okay. Well, if they can do that, that's

1 even better. It helps everybody then. Okay?

2 MR. McKEOWN: I don't know whether or not we can do  
3 that, Your Honor. We will check to see if it can be done and  
4 how hard it would be to do.

03:19:14

5 THE COURT: Right.

6 MR. McKEOWN: Because what I also don't want to do is  
7 shut down my electronic discovery process to occupy computer  
8 time if this is going to take three weeks to run it with a hit  
9 count. I just don't know how hard it is.

03:19:28

10 THE COURT: Well, you find out, and let Mr. Mogin  
11 know.

12 MR. McKEOWN: We will.

13 THE COURT: Okay. Now.

14 MR. MAROVITZ: Judge, Andy Marovitz for Temple-Inland.

03:19:40

15 We think Mr. Mogin's idea of coming back at some point  
16 is a good one. We do think that it would make sense for all  
17 the defendants to have an opportunity to be able to produce  
18 something in addition, and we mentioned to Mr. Mogin this  
19 morning that we are shooting to make a production during the  
20 week of April 30th that would go sometime until the 4th.

03:19:59

21 We would look for a day maybe in the middle of May to  
22 give Mr. Mogin and his team a chance to look at whatever  
23 documents they wanted to from the other defendants as well, so  
24 we were hopeful for some time during the week of May 14th if  
25 that's suitable with the Court.

03:20:21



1 THE COURT: Well, I was going to, I mean, that's fine.  
2 We'll find a date here. I had even wanted to give Mr. Mogin,  
3 if this would give him any kind of a comfort level so it  
4 doesn't just get out there, is I don't do settlement  
03:21:00 5 conferences on Fridays. So if we can get the ball rolling  
6 here, we could do telephone statuses so all of you don't have  
7 to travel all the time, but we could do some series of  
8 conferences, telephone conferences for people to make sure  
9 things were happening, productions were happening.

03:21:22 10 I think the next one ought to be in person again,  
11 though, because I think you're going to need feedback. But  
12 this isn't to -- I mean, I want to do everything we can to keep  
13 this momentum going is what I'm saying. I mean I'm saying it  
14 to the defendants too, because I think that would give you,  
03:21:43 15 Fridays can be kind of a clean, you know, like the old ravioli  
16 day, whatever that ad was.

17 MR. MAROVITZ: Wednesday is Prince Spaghetti day.

18 THE COURT: Right, it can be Prince Spaghetti, this  
19 can be clean day or something if you wanted to, because I don't  
03:22:00 20 do mediations on Friday. So let's do directly, if we were  
21 going to try to do, what's that week? You know, let me go get  
22 my sheets.

23 MR. MOGIN: The week that the defendants were  
24 mentioning was a little tough for us. Would the following week  
03:22:21 25 be possible? That would be the week of the 21st of May.

1 THE COURT: Okay.

2 (Pause.)

03:23:12

3 MR. MAROVITZ: Judge, we just took an informal caucus  
4 and got no dissent for May 22nd. But your schedule is the most  
5 important, so if May 22nd is a good date for you, that works  
6 for all the lawyers.

7 THE COURT: Well, I think we are going to make it  
8 work.

03:23:31

9 MR. MAROVITZ: Your Honor, what time would be  
10 convenient?

03:23:57

11 THE COURT: Well, do you think you'd try to have  
12 meetings again? Would you kind of -- this seems to be very  
13 productive. They are going to know a lot more. Can you do the  
14 Monday-Tuesday again, and then come if you wanted to come  
15 Tuesday at 1:30?

16 MR. MOGIN: I'll try, Your Honor. There's seven  
17 defendants, and it's very difficult to meet individually with  
18 the defendants, seven of them in one day basically.

03:24:11

19 THE COURT: But I meant if you started on Monday, the  
20 21st, would that work?

21 MR. MOGIN: Three to four a day is about what it  
22 takes.

03:24:23

23 THE COURT: Well, we can do 3 o'clock. I work at  
24 night. I mean we can start at, we can easily start at 3  
25 o'clock. Would 3:30 be better?

1 MR. MOGIN: How about we'll split the baby. How about  
2 2:30?

3 THE COURT: That's fine with me. I'm here.

03:24:34

4 MR. MOGIN: And I'll see what I can do by telephone  
5 and what I can do in person.

6 THE COURT: Yes. Does that, can some of you commit to  
7 the first day if Mr. Mogin comes from California?

8 MR. MAROVITZ: Sure.

9 THE COURT: Okay.

03:24:45

10 MR. McKEOWN: We'll make it work, Your Honor.

11 THE COURT: Sounds good.

03:25:02

12 What are we telling Judge Shadur? Here's what I want  
13 to know, because you've got the April 30th status. I think  
14 when I called him the last time, I think he reset it till April  
15 30th.

16 MR. MAROVITZ: Yes. Our thought for the defendants  
17 would be it would make sense to reset that again till at least  
18 sometime after we've had a chance to meet with you.

03:25:17

19 THE COURT: Well, one thing I could do if you're all  
20 going to be here the 22nd of May, I mean, maybe would you like  
21 to meet with him? Do you want to tell him yourself what's  
22 going on or, I mean --

23 MR. MOGIN: I think that would be productive, Your  
24 Honor.

03:25:30

25 THE COURT: I have no idea if he sits on Tuesday. I

1 have no idea on anything.

2 MR. MOGIN: Judge Shadur? I can't believe he doesn't  
3 sit on Sundays.

4 THE COURT: Right, that's true.

03:25:40

5 MR. MAROVITZ: Judge, obviously if Judge Shadur is  
6 interested in hearing the status, we would present it to him.  
7 We don't, I don't know that there's a need to take up his time  
8 until we have some resolution one way or the other. I think we  
9 are working toward --

03:25:54

10 THE COURT: Well, that is true because we don't know  
11 yet.

12 MR. MAROVITZ: We are working right now towards  
13 resolution, and, frankly, it might be better for everybody if  
14 we got either to a place where we had a more concrete  
15 resolution of the issues or a live dispute for Your Honor or  
16 Judge Shadur to resolve.

03:26:06

17 MR. MOGIN: It's a good point, Your Honor.

18 THE COURT: Yes.

19 MR. MOGIN: Maybe the best thing to do is Judge Shadur  
20 would probably rather hear from you than us.

03:26:16

21 THE COURT: That's true because he likes Nan so much.

22 MR. MOGIN: So perhaps if you conferred with him, and  
23 we'll do whatever you guys decide, obviously.

24 THE COURT: Right. And if he wanted to, I can offer  
25 to him that you're here. If he needs to, I think he'll be

03:26:29

1 happy to do it this way.

2 And so we are going to continue to try, and that will  
3 still give us plenty of time that if we are not able to do it  
4 and you want to either continue with argument, the hearing,  
03:26:52 5 whatever you want, you're going to have the ability to do that.

6 MR. MOGIN: There's one other subject that I would  
7 like to raise, Your Honor.

8 THE COURT: Sure.

9 MR. MOGIN: And not to anticipate in advance or to  
03:27:06 10 somehow ruin the possibility of agreement, but we had been  
11 looking at the Court's procedures on motions to compel, and  
12 they, we gamed out how much time it might take for a typical  
13 motion and it was about a six- to seven-week process.

14 THE COURT: All right. Now, let me just tell you,  
03:27:25 15 though, on that procedure, we just instituted about a year ago,  
16 I looked at Shira Scheindlin's web site. She also told me at  
17 some conference I was at, her web site says no discovery  
18 motions, or discovery motions are prohibited, and I guess I  
19 thought oh, maybe I should start increasing the ante for  
03:27:57 20 discovery motions.

21 In this case, you have to have a meet and confer.  
22 Obviously you have to have a real meet and confer. You do not  
23 have to -- I'm not holding you to that entire process. If your  
24 meet and confer cannot work, you can even agree upon a  
03:28:15 25 discovery schedule.

1 MR. MOGIN: Thank you, Your Honor. Appreciate it.

2 THE COURT: That will take that away because I do in  
3 fact want to do as much of the discovery in this case as  
4 possible.

03:28:26

5 MR. MOGIN: Thank you, Your Honor. That's very  
6 helpful.

7 THE COURT: And the same thing for the defendants too  
8 if you're having a problem too.

9 MR. McKEOWN: Thank you.

03:28:34

10 THE COURT: You have a protective order already.

11 MR. MOGIN: Yes, ma'am.

12 THE COURT: Now, I do have another question. How far  
13 are you on the 30(b)(6)s?

03:28:47

14 MR. MOGIN: We still have PCA which is scheduled I  
15 believe for May the 6th?

16 MR. FELLER: 10th.

17 MR. MOGIN: May the 10th. And we still have -- let  
18 the record note that Ms. Miller just threw Mr. Mandell under  
19 the bus, pointed him out. So we still have his client to go,  
20 and Georgia Pacific.

03:29:05

21 THE COURT: All right. Something I utilized with Miss  
22 Miller in our last antitrust case that if I could impose, this  
23 would help because we were trying to do working statuses, is  
24 that I would ask that the day before, it doesn't even have to  
25 be before that, if I could have a short status letter or a

03:29:34

03:29:56 1 report, whatever you want, if you want it for the record or you  
2 can -- and these would be, it would kind of get you thinking  
3 issues for the agenda too. And it doesn't have to be long,  
4 complicated, grammatically correct. It doesn't have to be  
5 anything. It's just kind of here we go, Judge, here's what we  
6 need to talk about, okay?

7 MR. MOGIN: Could I beg a favor on that, Your Honor?

8 THE COURT: Sure.

9 MR. MOGIN: Make it a very short page limitation.

03:30:09 10 THE COURT: I don't even do that. I mean, it's just  
11 very, it's just very simple here are the things. You know,  
12 we've got agreements on this, we don't need to talk about this,  
13 but here are the issues.

03:30:25 14 I'm really curious to see, will you let me know on  
15 this dictionary? This would be helpful.

16 MR. McKEOWN: Your Honor, we could probably get you a  
17 copy if you would like one.

18 THE COURT: No, no.

19 MR. McKEOWN: I think I have my answer.

03:30:36 20 THE COURT: Okay, thank you.

21 Do any of the defendants, does anyone wish to say  
22 anything? I am really conscious that each of you are getting  
23 individual consideration. I think a lot of clients now read  
24 transcripts, and I want to make sure that everyone, if anyone  
03:30:57 25 needs, would like to say anything about their client, they have

1 an opportunity to do so.

2 Okay. Well, new plaintiffs' counsel, who is new here  
3 who wasn't here before? Anybody new.

03:31:12

4 MR. MOGIN: This is our co-counsel, Mr. Goodwin from  
5 Philadelphia.

6 THE COURT: Hi, Mr. Goodwin. I'm glad you're here. I  
7 saw your name.

03:31:25

8 MR. MOGIN: What I didn't tell Your Honor is that the  
9 plaintiffs have for each defendant and for certain third  
10 parties our co-counsel we have assigned so they specialize in  
11 particular defendants. So Mr. Goodwin is the specialist in  
12 Georgia Pacific.

13 THE COURT: Well, good.

03:31:37

14 MR. MOGIN: Mr. Eisler was here before. He was for  
15 PCA.

16 THE COURT: That's good.

17 MR. MOGIN: So each of those came in for these meet  
18 and confers.

03:31:44

19 THE COURT: I noticed that on the 30(b)(6)s there were  
20 people other than you sending letters, and I couldn't figure  
21 out how that was happening.

22 MR. MOGIN: So each of them came into Chicago and  
23 participated in the meet and confers.

24 THE COURT: Good. Does that work for you, sir?

03:31:57

25 MR. GOODWIN: Yes, that's working just fine. Thank



1 you, Your Honor.

2 THE COURT: Okay, thank you.

3 Well, we'll see everybody. If you have any  
4 emergencies, anything like that, we take phone calls here,  
5 okay. You can always email Chris.

03:32:08

6 Peace. Bye.

7 MR. MOGIN: Thank you, Your Honor.

8 MR. McKEOWN: Thank you, Your Honor.

9 THE COURT: See you in a couple weeks.

10 (Proceedings concluded.)

11 C E R T I F I C A T E

12 I, Michael P. Snyder, do hereby certify that the  
13 foregoing is a complete, true, and accurate transcript of the  
14 proceedings had in the above-entitled case before the Honorable  
15 NAN NOLAN, one of the judges of said Court, at Chicago,  
16 Illinois, on April 19, 2012.

17

18 /s/ Michael P. Snyder

19 Official Court Reporter

20 United States District Court

21 Northern District of Illinois

22 Eastern Division

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